

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

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Orbit Telecom

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IC No.: 05-IO163814S

Complaint Regarding

Unauthorized Change of Subscriber's

CC Docket: 94-129

Telecommunications Carrier

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**ORBIT TELECOM'S PETITION FOR RECONSIDERATION**

By and through the instant petition, Orbit Telecom ("Orbit") respectfully seeks reconsideration of the Federal Communications Commission (the "Commission") Order adopted July 26, 2005 and released July 29, 2005 (the "Order") in the above-referenced matter. In the Order, the Commission determined that Orbit changed Mr. Abiodun Johnson's "Complainant") telecommunications service provider without obtaining his authorization and verification in violation of 47 C.F.R. §§ 64.1100-64-1190. Further, the Commission granted the relief sought in Complainant's complaint (the "Complaint") holding that Orbit's actions resulted in an unauthorized change to Complainant's telecommunications service provider.

Commission's Order should be reconsidered because: 1) Orbit is merely an enhanced service provider that charges its voicemail services to customer local exchange carrier ("LEC") telephone bills and has neither the requisite license, nor the ability, to change the Complainant's telecommunications service provider; and 2) a careful reading of the February 2005 SBC Communications, Inc. ("SBC") LEC telephone bill (the "Bill") itself, which is annexed to the Complaint, demonstrates that the Complainant was mistaken in alleging that his telephone

service provider had been changed by Orbit when, in fact, only Orbit-related enhanced service charges had been placed on his Bill.

## **I. Background**

On March 15, 2005, the Complainant filed a Complaint with the Commission against Orbit. The Complaint alleged that Complainant never verbally authorized or signed any contract with Enhanced Services Billing, Inc. ("ESBI") and/or Sprint Communications, Inc. ("Sprint") for long distance services. ESBI serves as Orbit's LEC billing processor for each Orbit voicemail service account that is purchased and charged to a consumer's LEC telephone bill. According to the Bill annexed to the Complaint, Sprint appears to serve as Complainant's long distance provider. Please note that Orbit is in no way affiliated with Sprint, either as a reseller or an agent.

## **II. Procedural History**

The Commission notified Orbit of the Complaint through correspondence dated May 20, 2005. On June 16, 2005, Orbit responded to the Complaint based upon the reasonable, yet mistaken, assumption that the Complaint set forth allegations regarding the voicemail services that Orbit actually provides. In fact, the allegations contained therein were significantly different. The Complainant alleged that Sprint had become his long distance telecommunications services provider without his authorization and verification. Orbit responded to the Complaint as if the Complaint addressed voicemail services that Orbit actually provides, rather than long distance telephone service that Orbit does not provide. As such, Orbit's June 16, 2005 response to the Complaint was mistakenly not responsive to Complainant's "slamming" allegations. In the interest of addressing the Complaint and prior to the adoption and release of the Commission's Order, on or about May 27, 2005, Orbit cancelled

the voicemail account that Complainant had purchased and that was charged to Complainant's telephone number. On the same day, Orbit issued four (4) refunds in the amount of Fourteen Dollars and Ninety-Five cents (\$14.95), respectively, and one (1) refund in the amount of Twelve Dollars and Ninety-Five cents (\$12.95), that had been previously billed to Complainant's telephone number. These credits appeared on Complainant's SBC LEC telephone bill on June 1 2005 and represent the total amount of Seventy-Two Dollars and Seventy-Five cents (\$72.75), plus tax, that he was previously charged. The Complainant has not received any further charges or demands for payment.

**III. Orbit is an enhanced service provider that charges its services to customer LEC telephone bills. Orbit has neither the requisite license, nor the ability, to change the Complainant's telecommunications service provider.**

Orbit is an enhanced service provider that offers **voicemail** services that are charged to customer LEC telephone bills upon receipt of the applicable customer's express consent. (emphasis added). At no time has Orbit attempted to switch a consumer's long distance service, nor does Orbit have the requisite license or ability to perform such an act.

Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any **telecommunications carrier** to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." (emphasis added). Orbit is neither a telecommunications carrier, a reseller of telecommunications services, nor an agent for a telecommunications carrier. Orbit is not engaged in the business of providing any interstate telecommunications services whatsoever. Orbit simply provides potential consumers with the ability to purchase Orbit voicemail services via the Internet. For every purchase of Orbit voicemail services, an Orbit customer submits

his/her registration information to Orbit and expressly consents to incur a one-time set up fee and associated recurring charges to his/her applicable LEC telephone bill.

**IV. It appears that the Complaint was mistaken in alleging that Orbit was responsible for placing Sprint long distance telephone charges on the Bill.**

Complainant was mistaken when he alleged that Orbit was responsible for placing Sprint long distance telephone charges on his SBC LEC telephone bill. It is reasonable to infer that when Complainant reviewed his SBC LEC telephone bill and observed that he had incurred “Orbit Telecom” charges, he erroneously assumed that Orbit was now his long distance carrier and had become so without his authorization and verification. Alternatively, Complainant may have misunderstood Orbit to be a Sprint agent. Please note that the Bill clearly indicates that the Complainant’s Orbit voicemail service is an enhanced service and not a long distance telephone service. As such, the Complainant was simply mistaken when he alleged that Orbit was responsible for the placement of Sprint long distance service charges on his SBC LEC telephone bill.

Based upon the foregoing, Orbit respectfully requests that the Commission reconsider its Order and find that Orbit did not “slam” Complainant.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David O. Klein", is written over a horizontal line.

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